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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #14, 1976

LOWER PLATHEAD EDUCATION ASSOCIATION,

Complainant,

vs-

SCHOOL DISTRICT #2, CHARLO, MONTANA,

Defendant.

FINAL ORDER.

No party to the above captioned matter has filed exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order, within the time limits established by the rules and regulations of the Board of Personnel Appeals.

THEREFORE, the Board adopts the Recommended Order, in the above captioned matter, as the Final Order of the Board.

BOARD OF PERSONNEL APPEALS
BY Brent Gromley
Brent Gromley, Chairman

Dated: December 12, 1976

BEFORE THE BOARD OF PERSONNEL APPEALS

LOWER FLATHEAD EDUCATION ASSOCIATION,

Complainant,

-vs-

SCHOOL DISTRICT NO. 7, CHARLO,
MONTANA,

Defendant.

ULP-14-1976

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER.

On May 11, 1976, the Lower Flathead Education Association (herein referred to as the Association), affiliated with the Montana Education Association, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against School District No. 7, Charlo, Montana (herein referred to as the School Board or the Board).

The charge alleges that Section 59-1605(1)(e), R.C.M., 1947, has been violated in that the Board has refused to bargain in good faith with an exclusive representative, and that Section 59-1605 (1)(a) has been violated in that the Board has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 59-1603(1).

A hearing in the above captioned matter was held on July 13, 1976, in the Charlo High School Library, Charlo, Montana. The Association was represented by Ms. Billie Loring of the law firm of Hilley and Loring, Great Falls, Montana; the Board was represented by Mr. Richard P. Heinz, County Attorney for Lake County.

As the duly appointed hearing examiner of the Board of Personnel Appeals, I conducted the hearing in accordance with the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M., 1947).

After a thorough review of the record of this case, I make the following:

FINDINGS OF FACT

1
2 1) That pursuant to Article III B 6 of the contract in
3 effect between the Board and the Association (Joint Exhibit #1),
4 negotiations were opened on March 19, 1976, on the issues of
5 wages and insurance. The negotiating team for the Association
6 requested of the Board budget figures for the school operations
7 for the 1976-1977 school year. These requests were made both
8 verbally and in writing (Complainant's Exhibit #1).

9 2) That the Board had a preliminary budget as of March 29,
10 1976, (Complainant's Exhibit #4), and that Mr. Lowe, Superintendent
11 of Charle Schools, was preparing the budget figures during the period
12 negotiations were taking place. Mr. Lowe presented figures to the
13 public in connection with a mill levy election; however when Mr.
14 Frantick of the Association negotiating team used these figures
15 in negotiations he was told they were incorrect.

16 3) That the Association received budget information on
17 June 28, 1976, and was told at this time that this was to be the
18 final budget.

19 4) That Mr. Lowe considered himself to be a member of the
20 Board's negotiating team although he had never been officially
21 named as such and that the contract stated that the Board's
22 negotiators would be a committee "of the Board".

23 5) That despite requests from the Association (Complainant's
24 Exhibit #3) the Board failed to clarify the authority and scope of
25 powers its negotiating team was able to exercise. Team members
26 testified that they had no power to make offers, grant concessions,
27 or in any way move toward a tentative agreement.

28 6) That numerous negotiating sessions were cancelled by the
29 Board without notification of the Association. The most frequent
30 reason for cancellations was that the Board did not have time to
31 consider and evaluate the previous offer from the Association so
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1 they felt there would be no sense in holding a negotiating session.
2 Cancellation was announced at Board meetings and it was assumed that
3 Association members would be present and would convey this
4 information to the negotiators.

5 7) That Mr. Lowe referred to Michael Keedy, M.E.A. Uniserv
6 Regional Director, on several occasions as a "rabble rouser",
7 that he stated that "sometimes schools and teachers would be better
8 off if the M.E.A. didn't exist", that he felt the M.E.A. had been
9 responsible for the delays in settling the negotiations, and that
10 he felt that M.E.A. was a "union-type" organization rather than a
11 professional one. Mr. Lowe recommended to Joan Schritz, a teacher
12 in Charlo, that if she joined the Association she would be wise to
13 remain inactive.

14 8) That Mr. Young, the elementary school principal, stated
15 at a Board meeting that teachers were too often concerned with
16 money and were not interested in students. During the course of
17 an evaluation of Shirley Christenson, Mr. Young refused to
18 complete the evaluation form until Mrs. Christenson answered
19 questions regarding her activities as president of the Association.

20 9) That of the extra-curricular, extra-pay assignments avail-
21 able in the school district none were currently held by M.E.A.
22 members. Most of these positions were open only to high school
23 level teachers and that at this level there are few Association
24 members.

25 10) That on two occasions the Board demanded verification
26 of votes taken by the Association; the Board would not accept the
27 Association's leadership's report on the outcome of an Association
28 vote. The Board wanted to know who voted and may have wanted to
29 know how each member voted.

30 11) That Joan Schritz, an Association member, was not told
31 whether or not her contract would be renewed until the day of the
32 hearing, although the materials she had requested be purchased for

1 her use the following year had been previously purchased by the
2 school.

3 12) That Helen Stevens, an Association member and member of
4 their negotiating team, was told she would not be renewed. She
5 demanded a hearing with the Board and enlisted the help of Mr.
6 Keedy. Although Mr. Lowe had known for some time that Mrs. Stevens
7 was to be renewed she was not told until the Board meeting and
8 then only late in the meeting.

9 13) That Roberta Sharp, former president of the Association
10 and secretary of the negotiating team, has been changed from a
11 second-grade teacher to a remedial reading teacher although she
12 has no special qualifications, didn't request a transfer, and at
13 the time of her last evaluation it was recommended she remain a
14 second-grade teacher.

15 14) That LaVern Frantrich, an Association member and member
16 of the negotiating team, has not been renewed nor has he been
17 terminated. Mr. Lowe advised the Board that it would be very
18 expensive to go through the legal process of terminating Mr.
19 Frantrich and recommended that the Board do nothing so that
20 Mr. Frantrich would continue his employment at the same salary,
21 without a wage increase.

22 15) That the Board has proposed changing the duty hours of
23 the teachers in the district, affecting lunch periods, free periods,
24 and supervisory duties. The Association attempted to have duty
25 hours inserted into the contract during the recent negotiations but
26 the Board refused claiming these duties were not open to negotiations.

27 DISCUSSION

28 The Association's charges of alleged unfair labor practices
29 focus on five issues which, while on occasion overlap, can for the
30 sake of clarity be discussed separately.

31 References throughout this discussion to decisions rendered by
32

1 the National Labor Relations Board will be made with the under-
2 standing that these precedents are not binding under the Montana
3 law. The similarity of the state and federal statutes are so
4 great however, that we would be remiss if we didn't look to this
5 valuable source of guidance.

6 1) The question of the Board's failure to provide financial
7 information.

8 Mr. Frantich expressed great frustration at not having budget
9 information available to the Association's negotiating team,
10 information he felt was necessary to prepare the teams proposal
11 so that it would not only be equitable with the salary schedules
12 of other districts but would also be "fair to the district"
13 with its own unique situation and problems. Such information is
14 imperative to the satisfactory progress of the collective bargaining
15 process. The NLRB has held that it is a duty of the employer to
16 provide the union, upon request, sufficient information to enable
17 it to understand and intelligently discuss the issues raised in
18 bargaining¹ and that a violation of this duty is as much a violation
19 of the bargaining requirement as failing to meet and negotiate.²

20 Mr. Frantich testified that he had repeatedly requested
21 budget information both orally of Mr. Lowe on numerous occasions
22 and in a letter of Mr. Vincent of the Board's negotiators dated
23 April 29, 1976, and entered as Complainant's Exhibit #1.

24 The Board and Mr. Lowe obviously had access to preliminary
25 budget information; they were responsible for the preparation of
26 the final budget by June 28. In past years budget information had
27 been made available to the Association at the beginning of negotia-
28 tions and has been received as early as the previous November.

30 1. *E. D. Allen & Co., Inc.*, 1 NLRB 914 (1936)

31 2. *Curries-Wright Corp. v. NLRB*, 342 F. 2d 61 (2nd Cir. 1965),
32 38 LRM 2433

1 On March 15, Mr. Lowe told Mr. Frantrich that the Board would
2 have to release any information, but there is no evidence that the
3 Board acted upon this matter. The minutes of the Board's March
4 29 meeting, entered as Complainant's Exhibit #4, show the
5 acceptance of a preliminary budget. Mr. Lowe presented budget
6 figures at a PTA meeting while discussing a mill levy election
7 which was to be held in early April. On May 12, Mr. Frantrich
8 again requested the budget but was told the figures were not yet
9 ready. On June 24, the final preliminary budget was adopted and
10 on June 28, the final budget was adopted at which time it became
11 a matter of public record and the Association was able to get a copy.

12 Both by evidence and inference it has been shown that the
13 Board had in its possession budgetary information which by law
14 should have been made available to the Association's negotiators.
15 The Board did not expressly refuse to provide the requested
16 information, but the failure to make a diligent effort to obtain
17 and provide it reasonably prompt may be equated with a flat
18 refusal.³ This information need not be in final form but should
19 be the relevant information necessary for intelligent negotiations.

20 It is disturbing that the Board would finalize the budget
21 before the completion of teacher negotiations and follow this
22 with such statements as "there is no more money available for
23 teachers' salaries" and "the figures cannot be changed". This
24 could cause problems in the successful completion of the
25 negotiations.

26 2) The question of negotiator authority.

27 Considerable confusion was caused by the presence of Mr. Lowe
28 on the Board's negotiating team. The current contract, (Joint
29 Exhibit #1), Article IV 5 1, states that they will be a committee
30 "of the Board". Mr. Lowe is not a member of the Board nor did the
31 Board ever take official action to make him a member of the team.

32

3. *NLRB v. John E. Swift Co.*, 227 F.2d 661 (7th Cir.), 48 LRRM 2096

1 Mr. Lowe considered himself a member of the team stating that he
2 could "speak for the Board" at one negotiating meeting. There
3 seemed to be no objection to Mr. Lowe being on the team; the
4 question was about the legitimacy of his actions.

5 Of greater concern was the authority of the Board's team to
6 engage in meaningful negotiations. The evidence presented at the
7 hearing indicated that the Board's negotiators were not empowered
8 to carry on negotiations but merely to act as conduits of
9 information to the Board. They had no power to make offers nor
10 to grant concessions. It is recognized that negotiators for
11 both labor and management must have their final agreements ratified
12 by the parties they represent, but that does not remove from the
13 negotiators the responsibility of arriving at tentative agreements.

14 The Association requested clarification of the authority of
15 the Board's team to negotiate. The Board answered with a copy of
16 a Board meeting at which the Board had chosen its negotiators.
17 This response failed to resolve the confusion because of two
18 different interpretations of the term authorize. The Board did
19 authorize its negotiators, that is they were the official
20 negotiators for the Board; the Board did not however clarify what
21 functions the team was authorized to perform nor which powers the
22 team was authorized to exercise.

23 This confusion and/or lack of expertise does not remove from
24 the Board the duty to conduct its business within the law.
25 Numerous NLRB decisions relating to the duty of negotiators make
26 clear the responsibility of a negotiating team to be empowered
27 to conduct meaningful negotiations.⁴

28 3) The question of cancellation of meetings.

29 There was no dispute of the fact that on several occasions the
30 Board cancelled scheduled negotiation sessions without notifying the
31

32 4. *APFM Broadcasting Co.*, 163 NLRB 1187, 78 LRRM 1852 (1970)

1 Association. Some Board members testified that in the future
2 every attempt would be made to inform the Association should
3 unforeseen circumstances force the cancellation of a meeting.

4 One reason for the cancellations was that the only power
5 given to the team was to convey offers from the Board. If at
6 Board meetings no action was taken relative to the negotiations
7 then the Board's team had no reason to attend a negotiation
8 session. When a meeting was cancelled it was announced at the
9 Board meeting and it was assumed an Association member would
10 relay the news to the Association's negotiators. The Board's
11 handling of this matter shows an alarmingly uncooperative attitude.

12 4) The question of interference and harassment.

13 Testimony indicated that considerable evidence existed to the
14 anti-Association attitudes held by officials of the school
15 district (see Findings of Fact 7, 8, and 10). The Association
16 presented evidence of situations which they felt were inspired
17 by these attitudes (see Findings of Fact 9, 11 through 14).
18 The correlation between these attitudes and these situations was
19 not shown to be such that an unfair labor practice violation
20 could be sustained solely in this area. In spite of the existence
21 of these attitudes it was not proven that teachers affiliated with
22 the Association were treated in a manner inconsistent with the
23 practices the Board directed toward the non-affiliated members of
24 the teaching staff.

25 5) The question of unilateral changes.

26 The Board proposed a change in duties and scheduling for the 1976-
27 77 school year which would have the effect of shifting a greater
28 percentage of the teachers' duty to supervising recess and play-
29 ground periods. The arguments during the hearing for and against
30 the proposed change were mostly of a professional nature; that is,
31 is greater supervision of students beneficial or detrimental to
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1 the development of the student. This supervisory duty was to
2 be offset by the teachers no longer having to teach music and
3 art as teachers in these specialties would be utilized and the
4 time formerly given to these areas would now be free.

5 The contract in effect at the time of the hearing contained
6 a clause specifying that it could be opened on the issues of
7 wages and insurance. During the negotiations on these issues
8 the Association attempted to insert a clause on duty hours and
9 schedules. The Board refused to negotiate on this clause
10 maintaining that it was not open to negotiation. I would agree
11 with the Board on this point. Clauses specifying duty hours
12 and schedules are common inclusions in teaching contracts but
13 this contract had no such clause. Was there such a clause,
14 and if the Board was to implement changes of this nature, a
15 violation would exist. The lack of such a clause on the subject,
16 the minor nature of the proposed changes, and the professional
17 nature of the decision to make the proposal cannot sustain the
18 charge of a violation.

19 CONCLUSIONS OF LAW

20 The allegation that School District No. 7, Charlo, Montana,
21 has engaged in unfair labor practices within the meaning of
22 Sections 59-1603(1) and 59-1605(1)(a), R.C.M., 1947, has not
23 been sustained by the Lower Flathead Education Association.

24 The allegation that School District No. 7, Charlo, Montana,
25 has engaged in unfair labor practices within the meaning of
26 Section 59-1605(1)(e), R.C.M., 1947, has been sustained by the
27 Lower Flathead Education Association in that School District No.
28 7 has, by withholding relevant information, failing to authorize
29 its negotiators with the authority to conduct meaningful
30 negotiations, and cancelling scheduled negotiation sessions
31 without notice, violated said section.

32 RECOMMENDED ORDER

It is hereby ordered that School District No. 7, Charlo,

1 Montana:

2 1) Cease and desist from failing to bargain in good faith
3 with the Lower Flathead Education Association;

4 2) Take the following affirmative action:

5 a) Upon request of the Association, promptly supply to the
6 Association relevant information necessary for intelligent
7 negotiations;

8 b) Authorize its negotiating team to conduct meaningful
9 negotiations and arrive at tentative agreements;

10 c) Meet with the Association and negotiate in good faith
11 at all scheduled negotiation sessions unless such sessions are
12 cancelled by mutual agreement or, should a situation arise where
13 attendance at such sessions is not possible, inform the members
14 of the Association's negotiation team, as early as is possible
15 after such a situation arises, of your inability to meet.

16 d) Notify the Administrator of the Board of Personnel Appeals,
17 in writing, what steps have been taken to comply herewith.

18 Dated this 19th day of October, 1976.

19 BOARD OF PERSONNEL APPEALS

20
21 BY 
22 Jeff Andrews
23 Hearing Examiner
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